



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3188

ENFORCEMENT &  
COMPLIANCE  
ASSURANCE DIVISION

Reply To: 20-C04

**RETURN RECEIPT REQUESTED**

Mr. Brent Willsey  
PowerTech Diesel, LLC  
3912 North Yellowstone Highway  
Idaho Falls, Idaho 83401

Re: Notice of Potential Violation and Opportunity to Confer

Dear Mr. Willsey:

The U.S. Environmental Protection Agency (EPA) has investigated and continues to investigate PowerTech Diesel, LLC ("Respondent" or "you"), for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. Information currently available to EPA suggests that Respondent may have committed violations of Sections 203(a)(2)(A) and (a)(3)(B) of the CAA, 42 U.S.C. §§ 7522(a)(2)(A) and (a)(3)(B), as discussed in the enclosed Summary of Potential Violations ("Summary"). Specifically, information currently available to EPA suggests that: (1) Respondent has failed to fully respond to EPA's January 23, 2020, information request ("Information Request") submitted under Section 208(a) of the CAA, 42 U.S.C. § 7542(a); and (2) Respondent has manufactured, sold, offered to sell or installed parts or components where a principle effect of the part or component is to bypass, defeat or render inoperative devices or elements of design of those motor vehicles or engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

It is important to emphasize that this Notice describes only those potential violations that have been identified based in part on the incomplete information Respondent has provided to date in its response to the Information Request. For example, information provided by Respondent thus far documents sales of six defeat devices, and separately EPA has identified offers for sale of an additional 23 defeat devices on the company's website. In addition, EPA is in possession of records documenting that Respondent purchased numerous defeat devices from suppliers. EPA expects that additional investigation will confirm that those purchased products were subsequently offered for sale, sold or installed on customer vehicles by Respondent, in violation of the CAA. Thus, EPA anticipates that a complete response to EPA's Information Request will likely identify numerous additional sales and installations of parts and components that defeat required emission controls, in violation of the CAA.

By this letter, EPA is extending to you an opportunity to advise EPA, via a conference call or in writing, of any further information EPA should consider with respect to the potential violations,

including the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. If you wish to confer with EPA regarding the allegations in the enclosed Summary or provide a written response, please contact John Keenan at (206) 553-1817 or [keenan.john@epa.gov](mailto:keenan.john@epa.gov) within ten days of receipt of this letter. Contacts from legal counsel should be directed to Brandon Cobb, Assistant Regional Counsel, at (206) 553-6917 or [cobb.brandon@epa.gov](mailto:cobb.brandon@epa.gov). Please provide any written response you choose to provide within 30 days of receipt of this letter, unless an extension has been requested and granted.

To the extent Respondent submits information to EPA in response to this letter or as part of discussions that result from this letter, Respondent may assert a confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as “trade secret,” “proprietary” or “company confidential.” Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by Respondent and may be submitted separately to facilitate identification and handling by EPA. Information covered by such a claim will be disclosed by EPA only to the extent and by the procedures set forth in statutes and 40 C.F.R. Part 2, Subpart B. Unless you make a claim at the time you submit the information in the manner described in 40 C.F.R. § 2.203(b), it may be made available to the public by EPA without further notice to you. 40 CFR 2.203; *see also* 41 Fed. Reg. 36902 (Sept. 1, 1976).

Thank you for your attention to this important matter.

Sincerely,

Morgan Jencius, Chief  
Air and Land Enforcement Branch

Enclosure

## Summary of Potential Violations

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Potential Violation and Opportunity to Confer to PowerTech Diesel, LLC (“Respondent” or “you”).

### **Statutory and Regulatory Background**

1. Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder were enacted to reduce air pollution from mobile sources, including particulate matter (PM), non-methane hydrocarbons (NMHC), oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO). In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
2. EPA’s investigation and allegations here concern parts or components for motor vehicles and engines subject to emission standards. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. See CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B). As required by the CAA, the emission standards must “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
3. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).
4. Under Section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for PM, NMHC, NO<sub>x</sub>, and CO applicable to motor vehicles and motor vehicle engines, including heavy-duty diesel trucks, based on a vehicle’s or engine’s class and model year. See generally 40 C.F.R. Part 86.
5. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling, offering to sell, importing or introducing or delivering for introduction into commerce any new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers (also known as “original equipment manufacturers” or “OEMs”) under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles or motor vehicle engines conforms to applicable EPA requirements governing motor vehicle emissions.
6. To obtain a certificate of conformity for a given motor vehicle or motor vehicle engine family, the original equipment manufacturer must demonstrate that such motor vehicle or motor vehicle engine will not exceed established emission standards for PM, NMHC, NO<sub>x</sub>, CO, and other pollutants. 40 C.F.R. §§ 86.004-21, 86.1844-01. The application for a certificate of conformity must include, among other things, identification of the covered

engine family, a description of the motor vehicle or engine and its emission control systems, all auxiliary emission control devices (AECDs) and the engine parameters they monitor, as well as test results from a test vehicle or engine showing that it meets the applicable emission standards. 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.1844-01.

7. An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system.” 40 C.F.R. §§ 86.082-2, 86.1803-01.
8. “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. §§ 86.094-2, 86.1803-01.
9. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a certificate of conformity, motor vehicle and motor vehicle engine manufacturers use a variety of hardware and software devices and elements of design.
10. Manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air and meet the emission standards in 40 C.F.R. Part 86. Such devices include exhaust gas recirculation (EGR), diesel oxidation catalyst (DOC), diesel particulate filters (DPFs) and selective catalytic reduction (SCR).
11. In addition to emission control hardware, various elements of design incorporated into motor vehicles, such as fuel mass, fuel injection pressure and fuel injection timing, can affect the quantity of regulated pollutants that are created by the engine. As an example, original equipment manufacturers of heavy-duty diesel trucks generally employ retarded fuel injection timing as an emission control method for NO<sub>x</sub>. See 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> ...”).
12. Modern vehicles and engines are equipped with electronic control modules (ECMs) and onboard diagnostic systems (OBDS). ECMs continuously monitor engine and other operating parameters to manage the operation of the emission control systems and elements of design, such as fuel injection timing. The OBD detects and reports malfunctions of emission-related elements of design through a network of sensors installed throughout a motor vehicle or motor vehicle engine. CAA § 202(m), 42 U.S.C. § 7521(m); see 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.
13. Pursuant to Section 208(a) of the CAA, 42 U.S.C. § 7542(a), “Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for

testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C and regulations thereunder, or to otherwise carry out the provision of this part and part C, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.”

14. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” It is also a violation for any person to cause any of the acts listed above. CAA § 203(a), 42 U.S.C. § 7522(a).
15. Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), makes it unlawful “for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under [Section 208 of the Act, 42 U.S.C. § 7542].”
16. Any person who violates Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), is subject to injunctive relief under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,876 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.
17. Any person who violates Section 203(a)(2) of the CAA, 42 U.S.C. § 7522(a)(2), is subject to injunctive relief under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$48,762 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4, Table 1.
18. EPA may bring an enforcement action for violations of Sections 203(a)(2) and (a)(3) of the Clean Air Act under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

### **Proposed Findings**

19. Respondent is a retail seller and installer of aftermarket vehicle parts or products located at 391 North Yellowstone Highway, Idaho Falls, Idaho 83401.
20. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
21. On January 23, 2020, EPA sent an information request (Information Request) to Respondent under Section 208 of the CAA, 42 U.S.C. § 7542, requiring the submission of, among other things, information related to Respondent’s manufacture, sale, offer for sale, and installation of parts, components, and services (products) which bypass, defeat,

or render inoperative any emission control component, element of design, or emissions related part or component. For reference, EPA's Information Request is attached to this Notice.

#### Information Request

22. Respondent's response to the Information Request was due on March 8, 2020. On February 18, 2020, Respondent—through its attorney—requested an extension of the deadline to respond to the Information Request to March 30, 2020. EPA granted the extension.
23. On March 30, 2020, Respondent requested an additional 60-day extension of the deadline (to May 31, 2020) to respond to the Information Request. EPA granted the extension on April 1, 2020.
24. EPA emailed Respondent's attorney on May 15, 2020, requesting an update and providing information on the submittal of electronic information in response to the Information Request. Respondent's attorney did not respond.
25. EPA again emailed Respondent's attorney on May 20, 2020, requesting an update and providing information on the submittal of electronic information in response to the Information Request. Respondent's attorney again did not respond.
26. EPA again emailed Respondent's attorney on May 28, 2020 to determine if Respondent needed EPA to establish an electronic folder for uploading Respondent's Information Request response. Respondent's attorney again did not respond.
27. EPA again emailed Respondent's attorney on June 1, 2020, requesting an update on Respondent's response to the Information Request.
28. On June 1, 2020, EPA called Respondent's attorney and left a message asking for an update.
29. Respondent's attorney responded by email on June 2, 2020 and explained that she had still not yet received a full response from Respondent. Respondent's attorney attached what she described as "[Respondent's] sales report for all products sold through [Respondent's] website for the entire duration of the request." Respondent's attorney also committed to "do [her] best to get [EPA] the balance of the requested information as soon as possible."
30. EPA emailed Respondent's attorney on June 3, 2020. In the email, EPA noted that Respondent had not yet provided a date by which it expected to respond in full to the Information Request. EPA also requested clarification on the cause of the continued delays. Ms. Conway did not respond.
31. EPA again emailed Respondent's attorney on June 8, 2020. The email noted that the sales report provided to EPA on June 2, 2020 did not appear to include Respondent's complete sales information for the period specified in EPA's Information Request

(January 18, 2018 to January 23, 2020), as well as the fact that the provided document included information unrelated to the Information Request. In addition, EPA reiterated its request for clarification of the reason for the continued delay in Respondent's response.

32. Respondent's attorney emailed EPA on June 9, 2020. The email included the cover letter to Respondent's annual sales report, as submitted to the Idaho Secretary of State's office, for calendar year 2019. The email also included a list of Respondent's employees. In addition, Respondent's attorney asserted in the email that Respondent was not in possession of website sale records preceding September 2019 because, at that time, Respondent only had a 10% interest in the website and the records were in possession of the individual with majority interest in the company.
33. EPA emailed Respondent's attorney on June 9, 2020. In the email, EPA acknowledged receipt of the materials included in the prior email, but noted that the materials were still outside the deadline for the Information Request and requested a full response as soon as possible.
34. EPA emailed Respondent's attorney on June 18, 2020 to follow up on a June 17, 2020 phone call. In the email, EPA noted that Respondent was continuing to advertise on its website products that EPA considered to be illegal defeat devices, despite previous statements that all such products had been removed from Respondent's website. EPA requested that Respondent remove all products from its website that have the principal effect of bypassing, defeating, or rendering inoperative emissions controls or elements of design installed on a motor vehicle or motor vehicle engine in compliance with the CAA, and provided examples of such products. EPA also requested that Respondent submit a statement, with appropriate documentation, certifying that it no longer had access to certain records specified in EPA's Information Request, as Respondent's attorney had previously reported to EPA. Respondent's attorney did not respond to EPA's June 18, 2020 email.
35. EPA emailed Respondent's attorney on June 26, 2020 requesting an update on Respondent's efforts to remove the above-described products from its website and respond to EPA's Information Request.
36. Respondent's attorney emailed EPA on June 30, 2020. The email suggested that she would have the requested certification statement and accompanying documentation "in the next couple of days." Respondent's attorney also explained that she had received records for all work performed on vehicles by Respondent for the first two weeks of January 2020 and could also provide records for work performed during 2018-2019. Respondent's attorney stated that Respondent was compiling additional information relevant to the Information Request.
37. EPA emailed Respondent's attorney on July 2, 2020. The email explained that with the exception of Question 19, Respondent had still not yet directly responded to EPA's Information Request. EPA noted that, although Respondent had provided sales information for the first two weeks of January 2020, Respondent had failed to use

relevant information to respond to Questions 1 through 11 and 15 through 18 of the Information Request. EPA also explained that documents provided by Respondent should be limited to information specified in the Information Request, rather than other extraneous sales. Finally, EPA again requested a statement certifying that Respondent no longer had access to a portion of records relevant to the Information Request, as Respondent, through its attorney, was asserting.

38. EPA emailed Respondent's attorney on September 10, 2020, in follow up to a September 9, 2020 voice mail message left by EPA. The email noted Respondent's continued delinquency in responding to EPA's Information Request and noted the serious consequences of Respondent's continued failure to respond.
39. Respondent's attorney emailed EPA on September 16, 2020. In her email, Respondent's attorney explained that she had "impressed upon [Respondent] the importance of gathering responsive information and needing [the] complete files to properly respond."
40. As of this date, Respondent has responded in full only to Request 19 of EPA's Information Request.
41. Respondent has failed to respond in full to Requests 1 through 18 and Request 20 of EPA's Information Request.
42. Therefore, on each day from May 31, 2020 to the present, Respondent has been in violation of Section 203(a)(2)(A) of the CAA, 42 U.S.C. 7522(a)(2)(A).

#### Defeat Devices

43. Based on Respondent's response to EPA's Information Request, from January 4, 2017 to December 17, 2020, Respondent sold or offered for sale at least 29 parts or components designed and marketed for use with or as part of motor vehicles or motor vehicle engines. This includes:
  - a. At least 1 exhaust replacement pipe that allows the customer to remove the control equipment of the exhaust system such as the diesel oxidation catalyst and the DPF. Respondent sold part number S6212PLM, MBRP 2003-2007 Powerstroke Turbo Back Off-Road Exhaust Systems Without Mufflers. Respondent's website: <https://powertechdiesel.com/i-3631-mbrp-2003-2007-powerstroke-turbo-back-off-road-exhaust-systems-without-mufflers.html> (accessed February 10, 2021) specifically states, "Note: This system removes the catalytic converter and may be considered to be an off-road use only."
  - b. At least 5 tuning products that allow the customer to remove the emission control components. Respondent sold "10-18 CUMMINS EFI live deleted Race only Tune file," Product ID PTD-1016efi50
  - c. At least 23 other products, which Respondent offered for sale on its website <https://powertechdiesel.com>. The products allow the customer to remove emission control components. Part numbers include: i3508, i3603, i4773, i4801,



i4797, i20013, i8036, i9507, i6982, i3915, 852NB, 864, 753NB, 832NB, 733NB, 853NB, 864NB, 834, 834NM, 734, 833NB, and i9423.

44. These parts and components were designed and marketed for use on makes and models of motor vehicles and motor vehicle engines manufactured by entities such as Cummins Inc.; FCA US LLC and its predecessors; General Motors Co.; and Ford Motor Co.
45. These motor vehicles and motor vehicle engines were designed for transporting persons or property on a street or highway, and therefore are subject to motor vehicle and motor vehicle engine emission standards under the CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.
46. The original equipment manufacturers of these motor vehicles and motor vehicle engines sought and obtained certificates of conformity from EPA, thereby certifying that the motor vehicles and motor vehicle engines demonstrated compliance with applicable federal emission standards, including design configurations using elements of design such as fuel timing, EGRs, DPFs, SCRs, and OBD systems.
47. The parts and components referred to in Paragraph 43 above, when installed in or on motor vehicles, bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Subpart A, 42 U.S.C. §§ 7521–7554.
48. Respondent knew or should have known that these parts or components were sold, offered for sale or installed to bypass, defeat, or render inoperative devices or elements of design that motor vehicle and motor vehicle engine manufacturers employ to meet emission standards in regulations promulgated under CAA Title II, Part A, 42 U.S.C. §§ 7521–7554.

Therefore, from January 4, 2017 to December 17, 2020, Respondent committed at least 29 violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).